

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 07-12**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Whether marketing services performed by an “off-premises contact business” are subject to the Tennessee Business Tax.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

[CITY] has requested a revenue ruling concerning the application of Tennessee Business Tax to activities described as an “off-premises contact business.” These businesses provide marketing services to the timeshare industry. For purposes of this ruling, it is assumed they are separate, unaffiliated legal entities from the timeshare companies to whom they provide services. The service consists of soliciting potential customers to tour the timeshare facility and listen to a sales promotion presented by the timeshare company. The off-premises contact business generally entices customers to participate by offering incentives such as gifts or discounted or free lodging. Generally, the amount paid to the business by the timeshare company is based upon the number of people who attend the sales promotion. These businesses operate from various places that generally are sub-leased from other businesses, but in some cases the off-premises contact business is the primary leaseholder.

QUESTIONS

1. Is the service provided by an off-premises contact business taxable under the Tennessee Business Tax Act?

2. If the service is taxable, within which classification does it fall?
3. If the service is taxable, are the sales to be reported separately for each business location?

RULINGS

1. Yes, the service is taxable under the Business Tax Act.
2. The service falls within Classification 3.
3. The business is permitted to file a consolidated business tax return covering all locations within a single taxing jurisdiction.

ANALYSIS

1. Taxability of the service

The businesses at issue provide marketing services to timeshare companies. More specifically, they solicit potential customers to tour the timeshare facility and listen to a sales promotion presented by the timeshare company.

The Business Tax Act, found in Tenn. Code Ann. §§67-4-701 et seq., is a component of Tennessee's privilege and excise taxes. Tenn. Code Ann. § 67-4-704(a) authorizes counties and incorporated municipalities to levy a tax on the privilege of "making...sales by engaging in any vocation, occupation, business or business activity enumerated, described or referred to in § 67-4-708(1)-(3)."¹ Accordingly, the threshold question is whether the business activity at issue is described in § 67-4-708(1)-(3).

Tenn. Code Ann. § 67-4-708(3)(C) includes each person "making sales of services or engaging in the business of furnishing or rendering services, except those described in subdivisions (3)(C)(i)-(xvi)." "Services" are defined to mean and include:

...every activity, function or work engaged in by a person for profit or monetary gain except as otherwise provided in this part. Services for profit or monetary gain does not include services rendered by a person for an affiliated business entity; provided that the services are accounted for as allocations of cost incurred in providing the service without any markup whatsoever. "Services" does not include sales of tangible personal property.

Tenn. Code Ann. § 67-4-702(19). Regulations add to this definition by stating that the term "services" includes all activity, functions or work engaged in by one person for

¹ Tenn. Code Ann. § 67-4-704(b) further authorizes counties and incorporated municipalities to levy a tax on the activities described in § 67-4-708(4), and § 67-4-705 levies a tax for state purposes on activities described in § 67-4-708(5). Those activities, however, are not at issue in this ruling.

another person for a consideration but does not include sales of tangible personal property. Tenn. Comp. R. & Regs. 1320-4-5-.48(1).

Clearly, the business activity at issue constitutes a taxable service as broadly described in §§67-4-702(19) and 67-4-708(3)(C). Furthermore, it does not fall within the specifically excluded activities listed in § 67-4-708(3)(C)(i)-(xvi).² Therefore, off-premises contact businesses are taxable under the Business Tax Act.

2. Classification of the business

Tenn. Code Ann. § 67-4-708 classifies taxable businesses according to their “dominant business activity,” and these statutory classifications determine the rate and due date of the tax. *Hermitage Mem. Gardens Mausoleum & Mem. Chapel, Inc. v. Dunn*, 541 S.W.2d 147 (Tenn. 1976). “Dominant business activity” is defined as “the business activity which is the major and principal source of gross sales at retail and the major and principal source of gross sales at wholesale of the business.” Tenn. Code Ann. § 67-4-702(5).

Tenn. Comp. R. & Regs. 1320-4-5-.15 provides the following with regard to the term “dominant business activity”:

For purposes of the business tax both wholesale and retail businesses are classified according to their dominant business activity. The item comprising the largest proportion of gross sales of the business when compared with other items sold determines its classification. A business may be taxed at both retail and wholesale rates but only one classification (of Classifications 1, 2, 3 or 4) shall apply. Once the classification is determined, the gross sales of the business or the proportionate part of the receipts applicable to both wholesale and retail sales, if liability exists under both types of business, are taxed at the rate specified by such classification. The fact that sales may be made at both wholesale and retail shall have no effect in determining the dominant business activity.

As discussed above, the service at issue is taxable under Tenn. Code Ann. § 67-4-708(3)(C) and therefore falls within Classification 3. If this service is the taxpayer’s dominant business activity, then the taxpayer will likewise fall within Classification 3. As stated above, the taxpayer’s classification only determines the rate and due date of the tax. All sales described in § 67-4-708 are subject to the tax, regardless of the taxpayer’s dominant business activity.

² The excluded activities generally include: medical services; legal services; educational services; nonprofit membership services; domestic services; nonprofit educational and research agency services; religious and charitable services; public utility services; banking services; insurance services; operating residential and nonresidential buildings except hotels and motels; leasing agricultural, airport, forest, mining, oil, and public utility property; veterinary services; and certain farming services provided by farmers to other farmers. Refer to the statute for the exact language.

3. Multiple business locations

Under Tenn. Code Ann. § 67-4-715(a), taxpayers must report and pay business tax to the county clerk, in the case of taxes owed to the county, and to the city official designated as the tax collector of such tax, in the case of taxes owed to a municipality. If a business engages in business activity at different locations or through different outlets, it must pay the minimum tax on each location or outlet; and it must report gross sales and tax due for each separate location. Tenn. Comp. R. & Reg. § 1320-4-5-.28(1). However, a taxpayer operating more than one place of business in a city or county and possessing a license for each separate location can file a consolidated tax return for all business locations within a single taxing jurisdiction, provided that such businesses are taxable under the same classification and at the same tax rate. Tenn. Code Ann. § 67-4-715(b) and Tenn. Comp. R. & Reg. § 1320-4-5-.53(2). The consolidated return must be accompanied by a report giving a breakdown of sales by location pursuant to Tenn. Comp. R. & Reg. § 1320-4-5-.28(1). Under the facts presented, an off-premises contact business may file a consolidated return for all sales of marketing services within the same taxing jurisdiction, provided it files a report giving the breakdown of the sales performed at each different location.

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Commissioner of Revenue

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